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The Effect of the Adoption of the Proposed Uniform Commercial Code on the Negotiable Instruments Law of Louisiana - Material Alterations

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allow such an endorsement to preclude further negotiation, as is permitted in NIL section 47.

By including the term "for deposit" within its definition of "restrictive" endorsements, the Code settles a serious conflict which exists under the NIL.⁶⁶ But the Code is silent as to the status of the much-used endorsement, "Pay any bank or banker" and therefore fails to settle the controversy as to whether or not such endorsement is restrictive.⁶⁷

Conclusion

Generally speaking, the pertinent sections of the Code dealing with transfer and negotiation represent improvements over their counterparts in the NIL. Furthermore, the 1955 amendments to the Code have eliminated two of the greatest objections to the 1952 draft. The amended Code includes a definition of "restrictive" endorsement, and it permits a holder to convert a blank endorsement into a special one. Both provisions were omitted from the 1952 version of the Code. There still exists in the Code, however, a conflict between the definition of "bearer" in section 1-201(5) and section 3-204(2). This conflict is non-existent under the NIL and should be corrected. Until this and other difficulties are eliminated it is submitted that serious consideration to the adoption of the Code in Louisiana be deferred. However, in order to preserve the desired uniformity of the Code, such changes should be made by the Code's draftsmen and not by Louisiana individually.

Billy H. Hines

The Effect of the Adoption of the Proposed Uniform Commercial Code on the Negotiable Instruments Law of Louisiana—Material Alterations

One of the several defenses available to parties to negotiable instruments under the NIL and the earlier law merchant is to show that the instrument has been materially altered. Now that the Uniform Commercial Code has been drafted, it is the purpose of this Comment to analyze the contents of the Code provi-

66. BRITTON, *BILLS AND NOTES* 268 (1943).

67. In *First Nat. Bank v. Cross & Napper*, 157 So. 636 (La. App. 1934), the court held that such endorsement was not restrictive and did transfer title. See Britton, *Transfers and Negotiations Under the Negotiable Instruments Law and Article 3 of the Uniform Commercial Code*, 32 TEX. L. REV. 153, 170 (1953).

sions concerning material alterations and to indicate what changes adoption of the Code would make in this phase of the law of negotiable instruments in Louisiana.¹

What Constitutes a Material Alteration

UCC section 3-407(1) provides: "Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

"(a) the number or relations of the parties; or

"(b) an incomplete instrument, by completing it otherwise than as authorized; or

"(c) the writing as signed, by adding to it or by removing any part of it."

Section 125 of the NIL enumerates certain changes which constitute material alterations of negotiable instruments.² Following this enumeration, it states further that "any other change or addition which alters the effect of the instrument in any respect, is material alteration." The Code defines a material alteration to be one "which changes the contract of any party thereto in any respect." This language is intended as a substitute for the enumeration of illustrations and the "any other change" clause of section 125 of the NIL.³ The Code's asserted comprehensive approach is not entirely achieved, however, because of the inclusion of three specific kinds of alterations in the second part of subsection (1). These three alterations are to be considered material only if they change the contract of one who signed.⁴

Because the Code's definition is intended to cover the specific enumeration of material alterations of NIL section 125, the NIL provisions will be examined first to determine what alterations encompassed there are included in the new provision. One

1. LA. R.S. 7:1-256 (1950).

2. Material alterations are defined in NIL § 125. It provides:

"Any alteration which changes

"(1) The date;

"(2) The sum payable, either for principal or interest;

"(3) The time or place of payment;

"(4) The number or the relations of the parties;

"(5) The medium or currency in which payment is to be made;

"Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is material alteration."

3. UCC 3-407, comment 1.

4. *Ibid.*

of the material alterations enumerated by the NIL is a change of the date of issue.⁵ That this constitutes material alteration was found so indisputable in one Louisiana case that counsel for both plaintiff and defendant agreed that changes of the dates of the notes in dispute constituted material alterations.⁶

The Code's definition also includes the NIL's second enumeration of a material alteration: a change in the "sum payable, either for principal or interest."⁷ In an early Louisiana case⁸ decided before enactment of the NIL, the court held that a change of the written amount and the figures payable, in a blotted and crowded writing over a palpable erasure, was an alteration of the instrument in a substantial part. In a 1928 case⁹ which was decided under the NIL, the validity of a note was held not to be destroyed by the lining out of the figures showing the amount of the note, and by the inserting above them of figures showing the balance due. Since there is no change in the contract of the parties to the instrument under these facts, the result under the Code should be the same.

A change in "the time or place of payment"¹⁰ would be a change of the contract of the parties and a material alteration under the Code. Louisiana courts have held repeatedly that changes of the due date vitiate the instrument.¹¹ No cases involving changes in the place of payment were found which were decided under the NIL. In an early Louisiana case,¹² where after

5. NIL § 125(1). This is a separate problem from a holder's insertion of the date in undated paper, which is authorized by NIL § 13: "Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable after a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date."

6. *People's Bank & Trust Co. v. Thibodaux*, 172 La. 306, 134 So. 100 (1931). The decision in the case depended on the legal effect to be given to the bank's contention that the alteration was made by the bank's agent, without its knowledge or consent. The bank was held chargeable with legal responsibility for the alteration.

7. NIL § 125(2).

8. *Union Bank v. Brewer*, 2 La. Ann. 835 (1847).

9. *Agricultural Credit Ass'n Inc. v. Iaccuzzo*, 167 La. 230, 119 So. 31 (1928).

10. NIL § 125(3).

11. *People's Bank & Trust Co. v. Thibodaux*, 172 La. 306, 134 So. 100 (1931); *Isaacs v. Van Hoose*, 171 La. 676, 131 So. 145 (1930); *Simmons v. Green*, 138 So. 679 (La. App. 1932). But where there is an alteration in a notation in the corner of the note reciting the date when the note became due, made before the note was sent to the maker for signature, the maker's liability is not affected. *A. L. Harrington & Co. v. Barron*, 15 La. App. 187, 131 So. 503 (La. App. 1930).

12. *Union Bank v. Brewer*, 2 La. Ann. 835 (1847).

the words "payable and negotiable at the office of discount and deposit of the Union Bank of Louisiana at" had been added (over an erasure) the word "Avoyelles," the court treated such a change as a material alteration. In addition to prohibiting changes, NIL section 125 has a separate provision that an alteration "which adds a place of payment where no place of payment is specified" is a material alteration. In another Louisiana case of historical interest,¹³ an English case¹⁴ was followed and the addition of a place of payment on the instrument was not considered material.¹⁵ The Code's definition is broad enough to cover the NIL's specific enumerations regarding both the change of the time and place of payment and addition of a place of payment where none is specified.

NIL section 125 (5) provides that a change in the medium of currency in which payment is to be made is a material alteration. No Louisiana cases interpreting this provision were found. The same provision should be considered as incorporated in the Code's definition of material alterations.

The Code¹⁶ and the NIL¹⁷ have literally the same provision that a change "in the number or relations of the parties" is a material alteration. The drafters of the Code state that "specific mention is made of a change in the number of [sic] relations of the parties in order to make it clear that any such change is material only if it changes the contract of one who has signed."¹⁸ The Louisiana courts have considered such changes in several cases.¹⁹ It has been held that erasure of the name of

13. *Nugent v. Delhomme*, 2 Mart. (O.S.) 307 (La. 1812).

14. *Trapp v. Spearman*, 3 Esp. N.P.C., 170 Eng. Rep. 537 (1799): "Lord Kenyon said, that this was not an alteration either in the time of payment, or in the sum; that to make a bill of exchange void, by reason of an alteration, it should be in a material part; though it had been formerly holden, that the even telling up a sum on a bill or writing anything upon it, would invalidate it, that strictness was now exploded; and as the alteration in the present case was not in a material part, but only pointing out the place where the bill was to be paid, it was not such an alteration as should invalidate the bill."

15. See *Oakey v. Hennen*, 18 La. 435 (1841), where the asserted alteration was the addition of a place of payment, but the court found the evidence insufficient to support such an allegation and thus did not consider the materiality question.

16. UCC 3-407(1)(a).

17. NIL § 125(a).

18. UCC 3-407, comment 1.

19. Probably the most poetic consideration of the idea underlying the provision was that of Justice St. Paul in *Alford v. Delatte*, 160 La. 712, 715, 107 So. 500, 501 (1926): "It may be true *sometimes*, that in borrowing money, whether for one's self or for another, it is a 'matter of no concern . . . from whom the money was obtained.' But we venture the opinion that Antonio would not have gone surety again for his friend Bassanio, if the creditor was once more to be

the payee and the substitution of another,²⁰ drawing a line through the name of the payee and interlining the name of another,²¹ and scratching through the co-maker's signature with pen and pencil²² are all material alterations.²³

Under the Code the completion of an incomplete instrument in any other than the authorized manner is a material alteration if it changes the contract of a previous signer.²⁴ This provision must be read with section 3-115²⁵ on incomplete instruments.²⁶ If the completion is in accordance with the authority given, it is effective as completed. This problem received separate treatment in NIL sections 14 and 15 rather than being classified as a material alteration. A separate provision of section 3-407²⁷ includes as material alterations changes in the "writing as signed, by adding to it or by removing any part of it." This provision was intended to cover the less artistic "occasional cases

Shylock. And also, where a man has a *limited* credit with a bank or individual (whether that limit be arranged for, or result only from his financial status), he may well be willing to lend *his credit with that bank or individual* to another (knowing then full well that the credit thus extended will not exceed such limited credit as he there has), without at the same time being willing to lend his credit to that other to any extent the latter may be able to use it."

20. See *Alford v. Delatte*, 160 La. 712, 107 So. 500 (1926). For two cases where the asserted defense was substitution of the payee's name but there was insufficient evidence to support such a holding, see *Davis v. Jordan*, 185 So. 545 (La. App. 1938); *McEachern v. Adcock*, 127 So. 99 (La. App. 1930). For a case decided before the NIL permitting recovery on a note where the payee's name had been partially erased and another's interlined, see *Levois v. Burguieres*, 10 La. Ann. 111 (1855). Here, however, *Levois* (plaintiff-payee on original note) sued *Burguieres* (defendant-maker) on a note where *V*'s name had been interlined as payee, and after *V* had endorsed and waived protest on the note. The court reasoned that if *B* (maker) had not consented to the interlineation of *V*'s name, he should pay the party he promised to pay; if *B* (maker) had not consented to the interlineation of *V*'s name, he should now pay the party he promised to pay; if *B* had consented to the interlineation, the interlined party has consented to payment to *L* by endorsement and delivery of the note to *L*.

21. *Hammond State Bank v. Strawberry Growers' Ass'n*, 162 La. 27, 110 So. 77 (1926).

22. *Commercial Credit Corp. v. Freiler*, 42 So.2d 296 (La. App. 1949).

23. For general discussions and cases on the problem, see BRANNAN, *NEGOTIABLE INSTRUMENTS LAW* 1212 *et seq.* (7th ed., Beutel, 1948); BRITTON, *BILLS AND NOTES* 1057 *et seq.* (1943).

24. UCC 3-407(1)(b).

25. "UCC 3-115. Incomplete Instruments.

"(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

"(2) If the completion is unauthorized the rules as to material alteration apply (Section 3-407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting."

26. UCC 3-407, comment 2.

27. UCC 3-407(1)(c).

of addition of sticker clauses, scissoring or perforating instruments where the separation is not authorized."²⁸

Since the Code adopts a general approach by way of definition of material alterations, there is no need for a "catch-all" clause similar to that contained in NIL section 125.²⁹ It should be borne in mind, however, that under the Code if the contract of the parties is *not changed*, there is no material alteration. Examples of changes which have been held to be "immaterial alterations" in Louisiana cases are a separate and distinct notation attached to a note, which was presumed by the court to have been made upon execution;³⁰ and the erasure from the back of a note of part of a list of pledged stock, which was considered as not being part of the note.³¹

Once it has been determined that an alteration is material, it then becomes necessary to determine the legal effect to be given to that alteration. This problem will be considered in the two divisions treated by the Code: rights of a holder of an altered instrument who is not a holder in due course, and rights of a holder in due course of an altered instrument.

Rights of Holder of an Altered Instrument Who Is Not a Holder in Due Course

UCC section 3-407(2) provides: "As against any person other than a subsequent holder in due course

"(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

"(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given."

28. UCC 3-407, comment 1.

29. After the enumeration of specific material alterations, NIL § 125 states that "any other change or addition which alters the effect of the instrument in any respect, is material alteration."

30. Exchange Nat. Bank v. Howard-Kenyon Dredging Co., 130 So. 848 (La. App. 1930). The same notation was held not to modify the unconditional promise to pay as shown in the body of the note.

31. Alexandria Bank & Trust Co. v. Honeycutt, 101 La. 261, 108 So. 475 (1926).

Under NIL section 124, an instrument altered without the assent of all parties liable thereon is *avoided*, except as against a party who has himself made, authorized or assented to the alteration, and as against subsequent holders. The Code proposes an important change of this provision. No longer will the *instrument* be automatically "avoided" by a material alteration; "the discharge is a personal defense of the party whose contract is changed by the alteration, and anyone whose contract is not affected cannot assert it."³² It will be remembered at this point that subsection (1) of the Code's provision defines an alteration as material "which changes the contract of any party thereto in any respect." For such an alteration to *discharge* a party to the instrument, the following requisites are necessary: (1) the material alteration must be made by "the holder"; (2) the alteration must be both "material" and "fraudulent"; (3) the party claiming discharge must not have assented to the alteration nor otherwise precluded himself from asserting the defense.

(1) There is some confusion³³ as to the meaning of the requirement that the alteration must be made by "the holder" to discharge a party to the instrument. No such distinction has been drawn in Louisiana cases heretofore. Discharges because of alterations have been held when the holder made the alteration³⁴ and when it could not be determined who altered the instrument.³⁵ The distinction becomes important because under the Code an alteration made by a party other than a "holder" discharges no one, and the instrument may be enforced according to its original tenor. Acts of a holder's authorized agent or employee, or of his confederates, are attributable to the holder.³⁶ Contrasted with this, however, is the fact that "spoliation," that is, alteration by a stranger, is not intended to affect the rights

32. UCC 3-407, comment 3(c).

33. See Steinheimer, *Impact of the Commercial Code on Liability of Parties to Negotiable Instruments in Michigan*, 53 MICH. L. REV. 171, 185 (1954). The query is put as to whether "holder" means any holder of the instrument or only to the holder at the time the claim is made and the defense asserted.

34. *Isaacs v. Van Hoose*, 171 La. 676, 131 So. 845 (1930); *Simmons v. Green*, 138 So. 679 (La. App. 1932).

35. *People's Bank & Trust Co. v. Thibodaux*, 172 La. 306, 134 So. 100 (1931) (alterations made during possession by payee bank imputed to payee); *Commercial Credit Corp. v. Freiler*, 42 So.2d 296 (La. App. 1949) (unexplained alteration assumed to have been made by payee's employee and knowledge imputed to payee).

36. UCC 3-407, comment 3(a).

of the holder.³⁷ The rule relating to "spoilation" by the Code is a return to the rule of the law merchant after some uncertainty under NIL section 124.³⁸ It should be observed that in two Louisiana cases³⁹ alterations made during possession of the instrument by the payee were *imputed* to the payee (without further proof). It would seem that the same result would obtain under the Code.

(2) To discharge a person from liability on an instrument, the alteration under the Code must not only be "material" but also "fraudulent." Changes made in the honest belief that they are authorized or out of a benevolent motive would not discharge a party.⁴⁰ Long before the enactment of the Louisiana Negotiable Instruments Act, there was case authority for the proposition that writings erased or interlined will be presumed to be false or forged if the erasure or interlineation was made in a substantial part.⁴¹ The later cases have dealt little with the question of intention of the parties making changes, but even changes in good faith and with honest intent have been held to vitiate the instrument under the NIL.⁴² The only significance given per se to a fraudulent change in the instrument has been that in the *absence* of a *fraudulent* change, the right to recover on the original consideration remains, notwithstanding the fact that the note itself is vitiated.⁴³ It would seem, therefore, that to require proof of fraudulent intent as an essential element of the defense of alteration would work a change in present Louisiana law.

(3) Even if all the other elements of an alteration sufficient to discharge a party under the Code are found, if "that party

37. *Ibid.*

38. See BRITTON, BILLS AND NOTES 1061 (1943).

39. See note 35 *supra*.

40. UCC 3-407, comment 3(b).

41. McMicken v. Beauchamp, 2 La. 290 (1831); Union Bank v. Brewer, 2 La. Ann. 835 (1847).

42. Simmons v. Green, 138 So. 679 (La. App. 1932). The opinion also cites the facts of Alford v. Delatte, 160 La. 712, 107 So. 500 (1926), to the same effect, although the latter case does not discuss the matter of intention per se.

43. Simmons v. Green, 138 So. 679 (La. App. 1932). The NIL has no direct provision concerning recovery on the underlying consideration, and the cases have been in conflict. See BRITTON, BILLS AND NOTES 1081 (1943). It would seem that since the Code restricts discharge to a party whose contract has been changed by a material and fraudulent alteration by the holder (absent assent or other precluding considerations on the part of person claiming discharge), that the party is absolutely discharged. This should follow from the Code's provision which discharges the party, rather than avoids the instrument under the NIL approach.

assents or is precluded from asserting the defense," he is not discharged.⁴⁴ This principle has been recognized in Louisiana⁴⁵ and no change should result in present Louisiana law.

Rights of a Holder in Due Course of an Altered Instrument

UCC section 3-407(3) states: "A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed."

A consideration of the Code's definition of a holder in due course found in section 3-302 and pertinent supplementary provisions as they affect the present negotiable instruments law of Louisiana has already been published.⁴⁶ Suffice it to say that several changes are proposed in the determination of this status.⁴⁷ Given that the party who seeks to enforce the instrument is a holder in due course, this subsection sets forth his rights in enforcing an altered instrument.

The Code provides that the "holder in due course" may in all cases enforce the instrument according to its original tenor.⁴⁸ This is the Louisiana rule.⁴⁹ In addition to this provision, sec-

44. "Or is precluded from asserting the defense' is added in paragraph (a) to recognize the possibility of an estoppel or other ground barring the defense which does not rest on assent." UCC 3-407, comment 3(c).

45. *Valley Securities Co. v. Brazier*, 16 La. App. 1, 132 So. 669 (1931) (defendant maker held estopped to assert alteration as a defense to notes which he induced plaintiff to take from the payee); see BRITTON, *BILLS AND NOTES* 1076 (1943).

46. Comment, *The Effect of the Adoption of the Proposed Uniform Commercial Code on the Negotiable Instruments Law of Louisiana — Rights of a Holder*, 15 LOUISIANA LAW REVIEW 419 (1955).

47. For example, "the Code does not require without qualification, as does the NIL, that the instrument be complete and regular or that it be taken before maturity. With regard to completeness and regularity, under the Code the question is whether defects on the face of the instrument are such as to put the purchaser on notice of defenses. With regard to maturity, the question is whether the purchaser has notice that he is taking an overdue instrument, not whether the instrument is in fact overdue." *Id.* at 420. See UCC 3-302(1)(c); UCC 3-304. Because there are changes in the NIL's definition of "holder in due course" under the Code, entirely different results could be reached on identical facts, even though both the NIL and the Code permit the "holder in due course" to enforce the instrument according to its original tenor. NIL § 124; UCC 3-407(3).

48. UCC 3-407, comment 4, points out that this "provision is merely one form of the general rule governing the effect of discharge against a holder in due course (Section 3-602)." UCC 3-602 provides: "No discharge of any party provided by this Article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument."

49. *Continental Bank & Trust Co. v. Sacks*, 152 La. 97, 92 So. 747 (1922). NIL § 124 provides in part: "But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor."

tion 3-406⁵⁰ gives the holder in due course the alternative right to enforce an instrument *as altered* where negligence of the obligor has substantially contributed to the alteration.⁵¹ The second part of subsection (3) provides that "when an incomplete instrument has been completed, he [holder in due course] may enforce it as completed." Under NIL sections 14 and 15, the rule is different. Under the former, if an incomplete instrument is filled up and is negotiated with authority of the maker to a holder in due course, he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.⁵² Under the latter, however, if an incomplete instrument is delivered *without authority* of the maker and subsequently completed, not even a holder in due course may enforce it. Under the Code's proposal, the holder in due course may enforce the completed instrument regardless of what the maker's position is as to the authority given. This, in effect, would reverse the rule of NIL section 15.⁵³

Conclusion

The definition of "material alterations" is essentially the same under the Code as under the NIL. By introducing additional factors for discharge, namely, that the material alterations must be made by the holder and must be fraudulent, the Code's provision may reduce the importance of alteration as a defense. Adding to the same probable result is the limitation of the discharge to the party whose contract has been changed, rather than the "avoidance" of the instrument. The provision

50. "Section 3-406. Negligence Contributing to Alteration or Unauthorized Signature.

"Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith." As amended by Supplement No. 1 to UCC (1955).

51. This provision is not taken from the NIL, but adopts the doctrine of the celebrated English case of *Young v. Grote*, 4 Bing. 253 (1827), which was long a subject of controversy in both English and American courts. See BRITTON, BILLS AND NOTES 1064 *et seq.* (1943). On the facts of *Young v. Grote*, it was held that the drawee bank might properly debit the account of the drawer for the full amount of a check so negligently drawn as to permit its subsequent alteration. This doctrine as reason for permitting recovery by a holder in due course has been recognized in Louisiana. *Isnard v. Torres*, 10 La. Ann. 103 (1855). See Comment, *The Effect of the Adoption of the Proposed Uniform Commercial Code on the Negotiable Instruments Law of Louisiana—The Doctrine of Young v. Grote*, 16 LOUISIANA LAW REVIEW 134 (1955).

52. *Maloney v. Central Finance Co.*, 18 La. App. 108, 137 So. 353 (1931); *Sandifer v. Stephens*, 8 La. App. 546 (1928).

53. UCC 3-407, comment 4.

permitting the holder in due course to enforce any completed instrument may also limit the importance of the defense.

Further, the difference in approach to the effect of alterations indicates that the Code has lessened the importance of the defense. While the NIL stated that "any other change or addition which alters the effect of the instrument in any respect" is a material alteration which results in avoidance of the instrument, the Code provides that "no other alteration discharges any party" as against any person other than a subsequent holder in due course. The "finality" of the Code's provision leaves little room for coverage of unforeseeable types of alterations.

The wisdom of these changes is a matter of speculation. The comments accompanying the text of section 3-407 state no purpose for the changes that were made, but merely explain what the changes are. The result, or at least the tendency, of the changes is to place the holder in a better position to overcome the defense of material alteration. This undoubtedly will encourage more ready acceptance of commercial paper in business transactions.

John S. White, Jr.

The Effect of the Adoption of the Proposed Uniform Commercial Code on the Negotiable Instruments Law of Louisiana—The Impostor Rule

An impostor is one who by impersonation of another induces a party to draw a negotiable instrument payable to the order of the impersonated person and to deliver it to him (the impostor). If the drawer¹ is deceived and surrenders possession to the impostor believing him to be the named payee, the impostor acquires title to the instrument and an endorsement by him in the name of the impersonated person to a third party is effective. Thus, when the fraud is discovered, as between the drawer, who is the first victim, and an endorsee from the impostor, who is the second victim, the former must bear the loss.² The Negotiable Instruments Law contains no provision governing the im-

1. Drawer is not used in the limited sense that it refers only to authors' drafts or checks; it is used in the broad sense to include the maker of a note.

2. For elaboration of this discussion, see BRITTON, *BILLS AND NOTES* § 151 (1943).